APPENDIX "A"

THE McCARRAN-FERGUSON ACT
TITLE 15 U. S. C. A. SECTIONS 1011-1015

Section 1011. **Declaration of policy**

Congress declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States. Mar. 9, 1945, c. 20, Section 1, 59 Stat. 33.

Section 1012. **Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948**

a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance; Provided, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amend-

ed, shall be applicable to the business of insurance to the extent that such business is not regulated by State law. Mar. 9, 1945, c. 20, Section 2, 59 Stat. 34; July 25, 1947, c. 326, 61 Stat. 448.

Section 1013. **Suspension until June 30, 1948, of application of certain Federal laws; Sherman Anti-Trust Act, applicable to agreements to, or acts of, boycott, coercion, or intimidation**

a) Until June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, and the Act of June 19, 1936, known as the Robinson-Patman Anti-discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

b) Nothing contained in this chapter (as enacted, the word "chapter" was "act") shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation. Mar. 9, 1945, c. 20, Section 3, 59 Stat. 34; July 25, 1947, c. 326, 61 Stat. 448.

Section 1014. **Applicability of National Labor Relations Act and the Fair Labor Standards Act of 1938**

Nothing contained in this chapter shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or the

Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938, or the Act of June 5, 1920, known as the Merchant Marine Act, 1920. Mar. 9, 1945, c. 20, Section 4, 59 Stat. 34.

Section 1015. **Definition of "State"**

As used in this chapter, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia. Mar. 9, 1945, c. 20, Section 5, 59 Stat. 34.

APPENDIX "B"

ANALYSIS AND LEGISLATIVE HISTORY OF THE McCARRAN-FERGUSON ACT

A careful examination of the language of the McCarran-Ferguson Act will disclose that Congress said clearly and unequivocally, in at least three different ways, that it intended to, and did, authorize the various States to regulate the business of insurance and every person engaged therein, and that the three-line subsection which is the basis of the trial court's decision does **not** nullify the four paragraph grant of Congress in the first three sections of the Act.

In Section 1 Congress said:

> "CONGRESS HEREBY DECLARES THAT THE CONTINUED REGULATION AND TAXATION BY THE SEVERAL STATES OF THE BUSINESS OF INSURANCE IS IN THE PUBLIC INTEREST, AND THAT SILENCE ON THE PART OF THE CONGRESS SHALL NOT BE CONSTRUED TO IMPOSE ANY BARRIER TO THE REGULATION OR TAXATION OF SUCH BUSINESS BY THE SEVERAL STATES." (All emphasis in this appendix is added).

It will be remembered that the McCarran-Ferguson Act followed the decision of the United States Supreme Court in the *Southeastern Underwriters* case (322 U. S. 533), which upset seventy-five years of jurisprudence by holding that insurance can be commerce within the meaning of the commerce clause of the United States Constitution, so as to be subject to Federal regulation and control. Congress specifically and unequivocally declares its policy

in Section 1, saying that **it is in the public interest that the business of insurance be regulated BY THE SEVERAL STATES.**

Section 2(a) could not be clearer and more unequivocal in stating that:

> "THE BUSINESS OF INSURANCE, AND EVERY PERSON ENGAGED THEREIN, SHALL BE SUBJECT TO THE LAWS OF THE SEVERAL STATES WHICH RELATE TO THE REGULATION OF TAXATION OF SUCH BUSINESS."

It is to be noted that Congress here says that not only the "business of insurance", but also **"every person engaged therein" shall be regulated by the laws of the several States.**

Section 2(b) provides that:

> "NO ACT OF CONGRESS SHALL BE CONSTRUED TO INVALIDATE, IMPAIR, OR SUPERSEDE ANY LAW ENACTED BY ANY STATE FOR THE PURPOSE OF REGULATING THE BUSINESS OF INSURANCE, OR WHICH IMPOSES A FEE OR TAX UPON SUCH BUSINESS, UNLESS SUCH ACT SPECIFICALLY RELATES TO THE BUSINESS OF INSURANCE: Provided that after June 30, 1948 * * * the **Sherman Act,** * * * the Clayton Act, * * * and the * * * Federal Trade Commission Act, as amended, shall be applicable to the business of insurance **TO THE EXTENT THAT SUCH BUSINESS IS NOT REGULATED BY STATE LAW."**

With reference to the first portion of this subsection, it is to be noted that Congress again says unequivocally that **no** Act of Congress shall invalidate, impair, or

supersede any State law regulating the business of insurance **unless such Act of Congress specifically relates to the business of insurance.** The Sherman Act is an Act of Congress and **it does not relate specifically to the business of insurance.** It would seem clear, therefore, that the State law would control. Louisiana has adopted an extremely comprehensive insurance code which completely regulates the business of insurance, including specifically the prohibition of illegal restraints and monopoly through boycott, coercion and intimidation. Severe penalties in the form of fine and imprisonment are provided. Yet the trial court has held that the Sherman Act supersedes and nullifies the Louisiana Insurance Code, and that Federal control over the insurance business in Louisiana continues, despite the sweeping provisions of the McCarran-Ferguson Act.

It will be observed that the second portion of Section 2(b) states that **after** June 30, 1948 (in other words when the moratorium provided by Section 3(a) expired), the Sherman Act, the Clayton Act and the Federal Trade Commission Act shall be applicable to the business of insurance **TO THE EXTENT THAT SUCH BUSINESS IS NOT REGULATED BY STATE LAW.**

In Section 3(a) Congress then provided the "moratorium" feature of the law, stating that until June 30, 1948 (as extended) the Sherman Act, the Clayton Act, the Federal Trade Commission Act, and the Robinson-Patman Act **shall not apply to the business of insurance or to acts in the conduct thereof.** This delay was designed to give each State ample opportunity (approximately three years) to enact laws regulating the business of insurance. Congress did not permanently abandon all control over

the business of insurance, but did expressly provide that after the moratorium the designated Federal Anti-Trust statutes would again become effective, **if, and only to the extent that, the respective State legislatures should fail to act in regulating the business of insurance.**

It is difficult to imagine how Congress could have been more explicit and more comprehensive in stating its policy and intention and in granting to the several States the full and complete right to regulate the business of insurance. It is to be noted particularly that even activities which might involve **combinations in restraint of trade, monopolies, and price fixing** in the business of insurance were clearly made the subject of **local** control. As pointed out above, Congress recognized that the public interest can best be served by regulating the insurance business at a local level; and this action on the part of Congress simply restored the status which had existed for seventy-five years before the *Southeastern Underwriters* case.

Then follows the three line subsection which according to the holding of the trial court undid and nullified all that Congress so comprehensively and explicitly did in the preceding four paragraphs. Subsection 3(b) reads as follows:

> "Nothing contained in this Act shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation."

It will be seen that this special subsection purports to provide an exception of some kind to the sweeping general provisions of the Act. If this subsection does what the trial court believes it did, it is in hopeless conflict

with the delegation to the States of the right to regulate the business of insurance on a local level, insofar as the present case is concerned.

The legislative history of this Act discloses that the provision which is now subsection 3(b) originally read as follows:

> "Nothing contained in this **SECTION** shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation."

Such language **would obviously have restricted the exception to the moratorium section of the statute.** In other words, the original bill provided that the States had a right to regulate the business of insurance; that the State legislatures were given approximately three years within which to do so; and that **during the moratorium and until the States acted,** the Sherman Act would remain applicable to acts and agreements of boycott, coercion and intimidation (assuming that it was "applicable" to such acts and agreements).

Both the Senate and the House originally passed separate bills both of which contain a provision in the moratorium section saying:

> "Nothing contained in this **SECTION** shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation."

Attached hereto (and printed herein) as **Exhibit 1** and **Exhibit 2,** are certified copies of Senate Bill 340 as it was originally introduced by Senator McCarran on January 18, 1945; and as reported by the Senate Com-

mittee on the Judiciary on January 24, 1945, together with **Exhibit 3,** consisting of a certified copy of Senate Report No. 20, dated January 24, 1945, to accompany S. 340.

Also attached hereto, as **Exhibit 4,** is a certified copy of the House version of S. 340, showing that after being passed by the Senate on January 25, 1945, this bill was referred to the House Committee on the Judiciary on January 29, 1945.

Attached as **Exhibit 5, Exhibit 6** and **Exhibit 7,** are certified copies of a) H.R. 1973, as introduced in the House of Representatives by Rep. Walter on February 2, 1945; b) as reported by the Hou Committee on the Judiciary on February 8, 1945, together with c) House Report 68 to accompany H.R. 1973.

It will be found that in every single one of the above documents the subsection now under consideration read:

> "Nothing contained in this (the moratorium) **SECTION** shall render the Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation."

An examination of House Report 68 **(Exhibit 7)** is most enlightening, particularly because of its Analysis of the Act by Section, reading as follows:

> "Section 1 declares that the continued regulation and taxation by the States of the business of insurance is in the public interest.
>
> Section 2 provides that the insurance business, and all persons engaged in such business,

shall be subject to State laws relating to the regulation and taxation of such business; and (b) that no act of Congress shall be construed to invalidate, impair, or supersede any State law which regulates or taxes the insurance business, unless such act specifically so provides.

Section 3 provides that the Federal Trade Commission Act and the Robinson-Patman Antidiscrimination Act shall not apply to the insurance business, or to acts in the conduct of such business.

Section 4 suspends the application of the Sherman Act and the Clayton Act to the business of insurance until January 1, 1948, for the purpose of enabling adjustments to be made and legislation to be adopted by the several States and Congress; and (b) provides that at no time are the prohibitions in the Sherman Act against any act of boycott, coercion or intimidation suspended. These provisions of the Sherman Act remain in full force and effect.

Section 5 provides that the enactment of this act shall not affect, in any manner, the present application of the National Labor Relations Act, the Fair Labor Standards Act, or the Merchant Marine Act, to the business of insurance.

Section 6 defines the term 'State'.

Section 7 provides for separability of provisions."

It will be noted that, according to the above analysis and to the bill then under consideration, the Sherman Act was to remain in full force and effect **during the moratorium** as to acts of boycott, coercion and intimidation; but regulation **after the moratorium** would be determined by the extent to which the States exercised, or

failed to exercise, the authority granted by Congress by enacting or failing to enact legislation regulating the business of insurance.

Our own analysis of the legislative history of the Act is interrupted at this point to emphasize certain extraordinary language of H.R. 68, quoted above. This report states that Subsection (b) of the moratorium section of the Act **"provides that at no time are THE PROHIBITIONS IN THE SHERMAN ACT AGAINST ANY ACT OF BOYCOTT, COERCION OR INTIMIDATION SUSPENDED. THESE PROVISIONS OF THE SHERMAN ACT REMAIN IN FULL FORCE AND EFFECT."**

Language of this kind evidently helped to establish and perpetuate a basic defect in the exception relied on by the trial court, and the exception became progressively more defective and more emasculated as the bill was processed through Congress, until it reached its present wholly conflicting and completely irreconcilable status. It will be observed that the above quoted report expressed the clearly erroneous view that the **Sherman Act contains** "prohibitions against any act of boycott, coercion or intimidation", and that **"these provisions of the Sherman Act remain in full force and effect."** We have examined and re-examined the Sherman Act, and we find that **it does not contain a single line or word providing that acts or agreements of boycott, coercion or intimidation are illegal!**

It was in this connection that, in the trial court, we urged so strenuously on motion to dismiss that the exception contained in what is now subsection 3(b) of the McCarran-Ferguson Act cannot possibly breathe life

into the Sherman Act in such a way as to create and establish a criminal act which is not provided by the Sherman Act itself! Some members of Congress clearly were of the erroneous impression that the Sherman Act contained provisions prohibiting acts and agreements of boycott, coercion and intimidation. But if Congress says that **nothing in the McCarran-Ferguson Act** "shall render the Sherman Act inapplicable to any agreement or act of boycott, intimidation or coercion", **does this declaration automatically make the Sherman Act "applicable" to any agreement or act of boycott, intimidation or coercion?** Obviously, a provision of this kind does not and cannot create a statutory crime by indirection; and yet this contention is the basis upon which the position of the trial court depends in the present case!

Returning to the legislative development of the McCarran-Ferguson Act, we attach hereto as **Exhibit 8,** S. 340 as reported by the House on February 13, 1945, and **Exhibit 9,** consisting of House Report 143, dated February 13, 1945. An examination of these two Exhibits will disclose that the House Committee on the Judiciary **struck out all of the provisions of S. 340 with the exception of the enacting clause,** and then proceeded to insert its own version of this law. However, the moratorium subsection continued to read as follows:

> "Nothing in this **SECTION** shall render the said Sherman Act inapplicable to any act of boycott, coercion, or intimidation."

Hence, all comments contained in H.R. 143 are referring to a bill in which the exception now under consideration was clearly and expressly **limited to the period of the moratorium.**

The "Analysis by Section" phase of House Report 143 contains virtually the identical statements as are contained in House Report 68, quoted above. It is important to note that this report also contains the **previous statement of the erroneous assumption or impression that the Sherman Act prohibits acts of boycott, coercion and intimidation,** and that **"these provisions of the Sherman Act remain in full force and effect".**

Attached hereto as **Exhibit 10** is a certified copy of the Conference Report (House Report 213) dated February 22, 1945, in which the House and Senate Committees agreed upon the final language of the McCarran-Ferguson Act. This is the first draft of the statute in which the language of the exception now under consideration was changed to read:

> "Nothing contained in this **ACT** shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation."

The conference report made absolutely no comment upon this change, which, if the trial court is correct, completely altered the meaning and duration of the exception, and by the mere stroke of a pen by some member of the conference committee changing a single word from "Section" to "Act", emasculated and nullified the delegation to the States of the regulatory powers contemplated by all prior versions of the statute!!

With this legislative background it is impossible to reconcile this abortive exception with the clear and sweeping general provisions of the Act. As pointed out above, the assumption or impression by some members of

Congress that the Sherman Act contains provisions prohibiting acts or agreements of boycott, coercion or intimidation is completely erroneous; and this misconception is undoubtedly responsible for the strange exception which the emasculation of the original bill finally produced.

Some of the pertinent statements made in the course of the debates, showing the clear intention of Congress to permit the states to regulate the business of insurance, and also disclosing the state of confusion which surrounded the consideration of the exceptions to the general provisions of the statute are as follows (emphasis added):

> Proceedings and Debates of the 79th Congress, First Session Vol. 91, Part 1, January 30, 1945 to February 23, 1945.

SENATE

Page 485:

> MR. TAFT. I think there is an ambiguity in the bill. Assume that no more legislation were enacted and ir 1948 a case should arise involving the question. Does the Sherman Act invalidate any State law under this bill? In Section 4(a) of the bill it is implied that in 1948 the Sherman Act shall again come into force unless something has been done in the meantime. However, in section 2(b) it is implied that even in 1948 the Sherman Act shall not invalidate any State regulatory law. I think that in that respect the bill is ambiguous on its face. We should straighten out the difference between the two sections.
>
> MR. RADCLIFFE. I would assume that at the end of the period of moratorium the Clayton Act and the Sherman Act would apply.

MR. TAFT. Paragraph (b) of section 2 of the bill states that "No act of congress shall ever presume to invalidate a State law on the subject of insurance."

MR. FERGUSON. I suggest that we could remedy the defect by making the subsection read: "Until January 1, 1948, no act of Congress", and so forth.

THE VICE PRESIDENT. Does the Senator from Michigan offer that as an amendment to the amendment offered by the Senator from Utah (Mr. Murdock)?

MR. FERGUSON. I offer it as an amendment to the amendment.

Page 485:

MR. REVERCOMB. Mr. President, I have listened with interest to the discussion concerning the amendment to paragraph (b) of section 2. **It occurs to me that not only does the proposed act provide for a suspension of the Clayton Act and the Sherman Act, but the very purpose of it is to restore the control of the insurance business to the States.** If we make the change proposed in this section and say "until January 1, 1948", then the bill in its completeness will end in 1948. The present provision is - - - and this was the measure reported unanimously by the Committee on the Judiciary - - -

"No act of Congress" - - -

Existing at this time, or passed before this, or to be passed in the future - - -

"shall be construed to invalidate, impair, or supersede any law enacted by any State * * *, unless such act specifically so provides."

I do not think there should be any limitation of time in the provision. We do not want the law to end on January 1, 1948. **We want the business left in the control of the States, unless by enactment in the future we specifically state that we do not want something they are doing to be continued.**

MR. TAFT. The Senator's suggestion might be pertinent if it were not absolutely contradicted by section 4, which provides that on June 1, 1947, the Sherman Act shall again apply to the business of insurance. If we leave that provision in the bill, the one now being discussed is inconsistent with it, because if the Sherman Act applied to the business of insurance, any State law which authorizes a rating bureau becomes invalid, or those engaged in the business are subject to Federal prosecution for complying with the State law.

MR. REVERCOMB. The only two Federal laws mentioned are the Clayton Act and the Sherman Act, and the purpose of mentioning those specifically is to require the States to enact legislation as not to violate those two existing laws. If any legislation is enacted in the future, whatever it may be—I cannot contemplate it today—if any law shall be enacted by the Congress on interstate commerce which could possibly affect the business of insurance and bring it within the general term "interstate commerce," it would apply. **Why not let the provision stand that it shall not apply unless Congress specifically says in an act that it shall apply to the business of insurance, which we are now trying to return to the States?**

Page 486:

MR. REVERCOMB. As I see it, two things are proposed by this bill. Not only a moratorium with respect to the Sherman Act and the Clayton Act—and we all agree that that is its purpose—

but it goes further than that, if I may say so to the able Senator, and carries out the purpose of giving power to the States of regulation of insurance and the taxing of insurance companies, so long as they do not get into conflict with a Federal law. The section before us provides that no act of Congress shall be construed to invalidate a State law unless the act of Congress specifically states that the State law is in conflict with the Federal act and is designed to override it.

MR. MURDOCK. Will the Senator yield further?

MR. REVERCOMB. I yield.

MR. MURDOCK. Then it is applicable, it does apply, does it not, to the Sherman Act, and also to the Clayton Act, presently, because neither one of those acts specifically repeals or impairs or invalidates any State law?

MR. REVERCOMB. I do not agree with that conclusion, because section 4 of the bill specifically says that the Clayton Act and the Sherman Act shall again be in force on the dates mentioned.

MR. MURDOCK. That is what the Senator from Ohio called to the Senator's attention, that there is an inconsistency in the two sections, which is clarified by the amendment offered by the Senator from Michigan.

MR. REVERCOMB. I do not think there is an inconsistency when they are read together. One says that no act of Congress shall be construed to invalidate unless Congress specifically says that it shall invalidate. Section 4 provides specifically with respect to the Sherman Act and the Clayton Act. Subsection (b) of section 2 would apply to all other laws. Section 4(a) applies to the Sherman Act and the Clayton Act. I think the sections

can be read together. But I wish to say to the Senator from Michigan that if he inserts the language "until January 1, 1948," as the time to which that section shall be in effect, he automatically terminates it at that time, and automatically terminates the control of the States over insurance.

Page 487:

MR. ELLENDER: Mr. President, as I understand the pending measure it has two main purposes: First, a declaration of policy by the Congress that the continued regulation and taxation by the several States of the business of insurance is in the public interest and that the States shall continue to regulate and tax it, unless Congress specifically legislates on the subject matter to the contrary. Second. A moratorium is declared making ineffective the Sherman and Clayton Acts for a time specified in section 4(a) of the bill so that States can adjust their laws on the subject. The Judiciary Committee made a careful study of the problems involved and has reported the bill and I believe that the bill as it came from the committee is not ambiguous, but carries out the purposes above set forth by me.

The pending amendment, in my judgment, nullifies the first purpose of the bill. Although the Clayton and Sherman Acts are suspended by section 4(a), they shall be construed to invalidate, impair, or supersede any law enacted by a State for the purpose of regulating the business of insurance or which imposes a fee or tax upon such business, if the pending amendment is adopted.

Many insurance companies refuse to pay licenses and taxes in many States, I am informed, because of the Supreme Court decision in United States against Southern Underwriters Association et al., and **to now except those two acts, which**

formed the basis of the decision and, in effect, state that they shall be construed to invalidate State laws on the question of taxation and regulation of the insurance business is bound to lead to much confusion.

MR. FERGUSON. I take it the language now used would be very confusing. The bill excludes all acts except those enumerated. We will have to change the language so as to make all other acts not applicable except the Sherman Act and the Clayton Act. Then we except those acts in the next section.

MR. ELLENDER. Such language put in the proper place would cover the objection I suggested to the pending amendment. However, I am not advocating it, because I think the bill as reported by the Judiciary Committee is clear. **I think all of us agree that the States should retain the right of regulating and taxing the insurance business within their respective borders.**

MR. RADCLIFFE. First it is provided that they shall invalidate State laws. Then later it is said that there shall be a moratorium. That is not the most felicitous way of stating it. If it can be construed that section 4 clearly modifies section 2(b), we are safe; but it seems to me that is running a rather unnecessary risk, because subsection (b) of section 2 clearly states that those two acts shall invalidate State laws.

MR. WHERRY. Mr. President, I should like to ask the distinguished Senator from Michigan a question. If what he says be true, why is it necessary to have an amendment to subsection (b) of section 2 at all? I think we could put both sections together and do exactly what is desired.

As a member of the Committee on the Judiciary, I am for the bill as it came from the committee.

The reason I voted for it was that it would put the regulation of the insurance business in the hands of the States. That is the important thing in this bill. I believe that the amendments which have been suggested would be confusing and conflicting. In my judgment the bill would be better if it were left as it was reported from the committee than if we were to try to amend it on the floor of the Senate. I hope the amendments will be rejected.

HOUSE

Page 1086:

MR. GRAHAM. Is it not a matter of record that since the passage of the bill referred to in the House, the Supreme Court has denied a petition for a rehearing of the Southeastern Underwriters' Association, which makes this action imperative?

MR. WALTER. Yes; an application was made to the Supreme Court for a rehearing, and it is, indeed, unfortunate there was not a rehearing participated in by a majority of the Court. I think this decision by a vote of 4 to 3 was shocking, to say the least, because where a well-accepted rule of law is changed, as Justice Marshall put it a great many years ago, the change should come only when a majority of the Court participate in the decision. **This is another reason why it is imperative that something be done immediately; but the most important practical phase of the whole situation is that taxes due and owing to the insurance departments of the several States are collected between the 20th of February and the 10th of March.** It will be easy to compromise our views with the bill passed by the Senate; our views are contained in the bill recommended by the Committee on the Judiciary of the House. (This statement was made on February 14th).

Page 1087:

MR. HANCOCK. Mr. Speaker, the unfortunate decision of the Supreme Court in the Southeastern Underwriters case, decided last June, has thrown the insurance business into a state of utter confusion. That decision by four members out of nine members of the Supreme Court changed the established law of the land, **it reversed the will of Congress and created a new policy regarding the control and regulation of the business of insurance.** The decision has been rightly called judicial legislation. * * * **Heretofore the insurance business has been subject to regulation by the States because an unbroken line of decisions of the Supreme Court have held not only that insurance is not interstate commerce, but that it is not commerce at all. The decision maker insurance interstate commerce, and therefore subject to all the statutes we have enacted dealing with interstate commerce. There are four, I believe: The Federal Trade Commission Act, the Patman Antidiscrimination Act, the Clayton Act, and the Sherman Act.**

Unfortunately, we cannot repeal the decision of the Supreme Court. What we can do, however, is to suspend the operation of the statutes we have passed, limit their scope, and grant exemptions or exceptions.

Page 1088:

MR. BRADLEY of Pennsylvania. I want to vote for this bill if it is a compromise agreement between all parties concerned. But I am in a quandary because the Antitrust Division of the Department of Justice informed me just 10 minutes ago they were irrevocably opposed to the bill.

MR. ANDERSON of New Mexico. They are; and that is exactly what I want to discuss, if the gentleman will permit me to do so.

Page 1089:

MR. PATMAN. **Is it not a fact that section 3 is permanent law—not just a moratorium? It goes away beyond any agreement.**

MR. ANDERSON of New Mexico. I will not argue with the gentleman because I am not a lawyer, but I know it is too bad if we do not vote down the previous question and substitute the bill which everybody has agreed upon.

Pages 1089-1090:

MR. COCHRAN. Why cannot the gentleman take out the section that relates to the Federal Trade Commission and the Robinson-Patman Act?

MR. ANDERSON of New Mexico. I have tried to explain it. **I want to see a bill passed that can be enacted into law prior to the closing days of February,** at which time the insurance companies must pay their taxes to maintain the insurance departments in the various States. **There is a specific date involved. Personally I would like to see it out, but I want to see a bill passed today.**

THE SPEAKER. The time of the gentleman from New Mexico has expired.

MR. WALTER. Mr. Speaker, I yield 10 minutes to the gentleman from Iowa (Mr. Gwynne).

MR. GWYNNE, of Iowa. Mr. Speaker, when the Supreme Court last year decided the Southeastern Underwriters case it immediately made applicable to the business of insurance many laws that we have heretofore passed regulating interstate commerce. **When we passed those acts, Congress did not have in mind insurance; as a matter of fact when Congress passed the Sherman Act it was with the distinct understanding that it did**

not apply to insurance, because insurance at that time was not interstate commerce, under Supreme Court decisions. The net result of the Supreme Court decision therefore was to put the Federal Government in the field of control then being exercised by the States. The methods of control exercised by the States and by the Federal Government are conflicting, and the sole purpose of this bill is to take out as much of that conflict as possible until we can determine whether Congress will regulate insurance, or whether it will permit the States to regulate it.

Page 1092:

MR. SPRINGER. This bill provides a moratorium. That is the important feature contained in this bill. Everyone knows that great consternation developed following the decision in the case of the United States against Southeastern Underwriters Association, et al. The States did not know what to do following that decision, and the insurance companies certainly did not know what to do. **The question of taxation was involved, and the question of the control and regulation of insurance companies by the several States was also involved. At the present moment, unless this measure, or similar legislation, is passed to protect the States and protect the insurance companies with regard to their control and the question of taxation, utter confusion will result and utter chaos will reign in the several States.**

My thought has been, as has been stated on the floor of the House by others, that I would far prefer to take the question of insurance entirely out of the commerce clause of the Constitution and entirely away from any Government control. But this emergency is immediate and it is necessary to pass this legislation now. The States do not know what to do with respect to the collection of taxes

and the insurance companies do not know what to do with respect to the payment of taxes. The several States have no charted course with respect to the control or the regulation of insurance companies, since the case above cited, has been decided. Confusion and chaos has been brought about by that very peculiar decision.

Mr. Speaker, since this measure has been pending many insurance companies, and many State officers, have written to me respecting that resulting confusion. It is essential that this measure be passed promptly in order to avoid confusion in the future.

This measure seeks only to establish a moratorium until January 1948 **in order that the several States may continue their control and regulations over the insurance business** and to proceed with the collection of taxes, in the manner and form intended by Congress. At the end of that period I hope—and I am confident a majority of the Members also hope—that this matter may be worked out in a proper manner—**preserving to the several States their rights to control and regulate the insurance business within such States, and to collect the taxes now permitted—all without Government interference.** I intend to support the measure.

Page 1093:

MR. SUMNERS of Texas. Mr. Speaker, in the time allotted to me I hope I may be able to state the facts with reference to the insurance situation in such a manner as to be helpful to the Members in making up their minds. **Prior to the decision of the Supreme Court, which has been referred to, the business of insurance was in the control of the States. The decision of the Supreme Court establishing the interstate commerce characteristics in insurance disestablished State control in**

large measure, established Federal power, and put the whole thing in a state of chaos, as has been discussed by Members who have preceded me. I am one of those who regret this shift of governmental responsibility. I know it is not an easy job. A good many people in this country, however, feel the time is at hand when the States should have some hard, tough meat to chew on if they are to retain their governmental teeth. The fact that there are difficulties in the State handling of this matter is not, in the judgment of some people, a good reason why it ought to be moved into the Federal Government. But since this decision of the Supreme Court the whole thing is in a state of chaos, as I have stated. Insurance companies are hesitating to pay taxes to the respective States, and so forth. This bill is brought here for the purpose of creating a moratorium until everybody can find out just what the situation is and what should be done about it, what can be done about it. That is the purpose of the bill.

MR. PATMAN. Mr. Speaker, will the gentleman yield on that point?

MR. SUMNERS of Texas. I will be glad to yield.

MR. PATMAN. **The gentleman has stated it is a moratorium. Is not section 3 permanent law?**

MR. SUMNERS of Texas. I get the purport of the gentleman's question. I think, and I am very candid with the gentleman, section 3 should at least be moved down into section 4, where the expiration date is 1948. **But section 3 is not permanent law in an absolute sense, of course. Congress can repeal section 3 at any time.** I do not want to dodge the point. I agree with the gentleman. I think it ought to be down in section 4, but it is not permanent law except in a technical sense.

MR. KEFAUVER. Mr. Speaker, will the gentleman yield?

MR. SUMNERS of Texas. I yield to the gentleman from Tennessee.

MR. KEFAUVER. As a matter of fact, would not section 3 be subject to be changed in conference?

MR. SUMNERS of Texas. I think we can do something about it.

MR. PATMAN. No; the gentleman is mistaken.

MR. SUMNERS of Texas. I do not know whether it can or not, but it does not make so much difference, because it is not permanent law except in the sense that it has no expiration date. Congress could repeal it even before 1948. Section 3 suspends no law or power which obtained before the Supreme Court decision referred to. Section 3 is in line with the moratorium objective, lacking only the expiration date. It is to be suspended. I want it distinctly understood, however, I would be willing to change it in conference so as to make its suspension terminate in 1948. I think perhaps it can be done. If it cannot, I would support an independent act, if necessary. Let me speak now to the point which my distinguished friend, for whom I have great respect, the gentleman from New Mexico (Mr. Anderson), has raised. He objects to the elimination from section 4. I quote:

> For the purpose of enabling adjustments to be made and legislation to be adopted by the several States and Congress.

That language violates the principle of absolute moratorium and ought to be out of this bill. That is my position. It is not substantive law, I admit, but I hope in the intervening time we may be able to work out an arrangement under which

the Federal Government may work out a policy which will be as adjusted, as possible, to the desire of the Congress and the people and that the States be aided and not hindered in assuming more and more governmental responsibility.

Mr. Speaker, **if in the interim we can work out a system that would reestablish the power of the States to control insurance, would not that be a good thing to do? With all the power in this country moving into the Federal Government ought we not try to halt that movement if we can? I do not want an expression in this bill declaring that the moratorium is exclusively for the purpose of enabling the States to accommodate themselves to this new expression of Federal power. I want this time to be spent in seeing if we cannot work out a plan to contract in some degree this Federal power.** At least that time should be not committed. It should be an open period for broad examination of the whole matter for everybody—those who want more power in Washington and those who want less.

Proceedings and Debates of the 79th Congress, Second Session, Vol. 91, Part 2, February 26, 1945 to March 26, 1945

SENATE

Page 1442:

MR. MURDOCK. As I understand the conference report which is now before the Senate, it provides for a 3-year moratorium, which is fixed as ending on January 1, 1948, against the invoking of the Sherman Act and the Clayton Act, **and it provides that they shall again be in force after that period without any affirmative action on the part of the Congress, except as regulatory matters have been enacted by the States relating to subjects covered by those acts.**

MR. McCARRAN. **During the moratorium, Regulatory acts must be enacted by the several States in each of the several States. Otherwise the antitrust acts become effective after January 1, 1948.**

MR. MURDOCK. But is it not the purpose of the bill and does not the bill accomplish this—

MR. McCARRAN. It accomplishes a moratorium for 3 years against the operation of the acts mentioned, namely, the Sherman Antitrust Act, the Clayton Act, the Federal Trade Commission Act, as amended, and the Robinson-Patman Anti-discrimination Act.

MR. MURDOCK. So that during the moratorium it is intended, is it not, that the States shall affirmatively step into the regulation of the insurance business?

MR. McCARRAN. That is correct.

MR. MURDOCK. **And it is intended that on the expiration of the moratorium the Sherman Act, the Clayton Act, and the other acts mentioned will again become effective except—**

MR. McCARRAN. **Except as the States themselves have provided regulations.**

MR. MURDOCK. I thank the Senator.

MR. ELLENDER. Mr. President, will the Senator yield?

MR. McCARRAN. I yield.

MR. ELLENDER. At the end of the 3-year period will the taxing and regulatory powers of the States be in anywise affected should the Congress not take any action at all?

MR. McCARRAN. No; they will not be affected.

MR. ELLENDER. They will not be affected?

MR. McCARRAN. That is correct.

Mr. President, let me make one statement which I think should be placed in the Record here. It should be stated here, as it was stated in the report which went to the House, from which I read that—

> It is not the intention of Congress in the enactment of this legislation to clothe the States with any power to regulate or tax the business of insurance beyond that which they had been held to possess prior to the decision of the United States Supreme Court in the Southeastern Underwriters Association case. Briefly, your committee is of the opinion that we should provide for the continued regulation and taxation of insurance by the States, subject, always, however, to the limitations set out in the controlling decisions of the United States Supreme Court, as, for instance, in Allgeyer v. Louisiana (165 U. S. 578); St. Louis Cotton Compress Co. v. Arkansas (260 U. S. 346); and Connecticut General Insurance Co. v. Johnson (303 U. S. 77). ——

That expression should be made a part of this explanation. In other words, **we give to the States no more powers than those they previously had, and we take none from them.**

Page 1443:

MR. PEPPER. I have read hastily the conference report, but I am a little disturbed by what I have discovered in paragraph (b) of Section 2. I read beginning with section 2(a):

> Sec. 2(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such act specifically relates to the business of insurance; Provided, That after January 1, 1948, the act of July 2, 1890, as amended, known as the Sherman Act, and the act of October 15, 1914, as amended, known as the Clayton Act, and the act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

Does that mean that after January 1, 1948, the States may determine whether or not the Sherman and the other acts become applicable to the business of insurance?

MR. McCARRAN. **The answer to that question is "Yes". During the 3-year moratorium the States may, if they see fit to do so, enact legislation for the purpose of regulation. If they do enact such legislation, to the extent that they regulate they will have taken the business of insurance in the respective States out from under the Sherman Antitrust Act, the Clayton Act, and the other acts. If during the moratorium the States do not enact legislation for regulatory purposes, then on January 1, 1948, the Sherman Act, the Clayton Act, and the other acts will become immediately applicable.**

Page 1444:

MR. WHITE. **Mr. President, is it not perfectly clear that the force and effect of these Federal statutes may be applicable and shall be applicable to whatever extent the State law fails to occupy the ground and engage in regulation?** As I take it, there are two jurisdictions.

MR. McCARRAN. There always are.

MR. WHITE. **There is the State, authorized to act to whatever extent seems proper.**

MR. McCARRAN. That is correct.

MR. WHITE. Then the Federal Government can come in, and it does come in and may legislate beyond the limit of the State legislation.

MR. McCARRAN. **To the extent that the State does not regulate.**

MR. WHITE. **To the extent that the State does not regulate.**

MR. MURDOCK. Mr. President, does the Senator from Maine take the position that, under the conference report, it becomes necessary for the Congress to act again affirmatively, subsequent to any State action taken?

MR. WHITE. Not at all; that is not my view of the matter at all. **My view is that the State may regulate. If, however, the State goes only to the point indicated, then these Federal statutes apply throughout the whole field beyond the scope of the State's activity.**

MR. McCARRAN. **That is a correct statement.**

MR. MURDOCK. Without any subsequent action on the part of Congress?

MR. WHITE. Without any subsequent action on the part of Congress.

MR. MURDOCK. I think that therein lies a very important feature of this whole matter. **I agree thoroughly with the Senator from Maine that insofar as the States step into the picture affirmatively and act by regulation, they may do so.** As the Senator from Wyoming has said, we convey no authority, we simply recognize their right to regulate. **Insofar as they fail to cover the same**

ground covered by the Sherman Act and the Clayton Act, those acts become effective again.

MR. PEPPER. Mr. President, I wish to address myself to the subject, then, and I shall simply have to delay the Senate, because I wish to discuss the report. I shall be frank; I think the conference report bill practically destroys the effect of the Supreme Court decision, and I am against that. At least I wish to have time to go into it. I do not know of any emergency which requires that the report be agreed to this afternoon.

I should appreciate the privilege of considering the matter a little.

MR. McCARRAN. The Senator is correct regarding the 3-year moratorium, but beyond that he is in error.

MR. PEPPER. I would not expect Senators, even if they had the power, to change the report on the floor, and I am perfectly willing to have provided a 3 or 4 or 5 year moratorium, but I am not willing to see the decision of the Supreme Court emasculated. I wish to study the matter before I can give my consent to it. Otherwise, I certainly wish to address myself to it.

MR. McCARRAN. Just one question to the Senator, then I shall yield and the conference report may go over, so far as I am concerned. Does the Senator oppose State regulation of insurance?

MR. PEPPER. I do not oppose State regulation which is not inconsistent with the operation of the Sherman antitrust Act and the Clayton Act. **On matters of taxation, general regulation, and all that sort of thing, I think the States should regulate, but I think that now that insurance has been brought, by the decision of the Supreme Court, up to the bar of the Clayton Act and the Sherman Act, we should not give the insurance companies immunity from the applicability of those acts.**

Pages 1477-1478:

MR. PEPPER. Mr. President, if I may have the attention of the Senate for only a few minutes, I promise not to trespass unreasonably upon its patience.

We all know that last June, in the Southeastern Underwriters case, the Supreme Court of the United States held that the insurance business came within the interstate commerce clause of the Constitution, and that therefore the Clayton Act and the Sherman Antitrust Act were applicable to such business.

Mr. President, an effort was made by Senators and Representatives while this case was pending in the Supreme Court to enact legislation which would have explicitly exempted the insurance business from the applicability of the Sherman and Clayton Acts. However, the legislation which had been submitted was not adopted by the Senate, although, I believe, it was adopted by the House. After the decision of the Supreme Court holding that insurance is interstate commerce within the meaning of the commerce clause of the Constitution, legislation has been initiated in both Houses of the Congress to affect in one way or another the Supreme Court's decision. **I feel that the adoption of the conference report which embodies such legislation would have the effect of emasculating the Supreme Court's decision, and holding by congressional action that the Sherman and the Clayton Acts do not apply for all practical purposes to the business of insurance.** That is the exact point to which I wish to address myself.

The exact language in which I wish to direct criticism appears in section 2(b) of the conference report now lying on the desks of Senators, and reading as follows:

PROVIDED, That after January 1, 1948, the act of July 2, 1890, as amended, known as the Sherman Act, and the act of October 15, 1914, as amended, known as the Clayton Act, and the act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

I am not complaining about any other provision of the conference report. In other sections of the conference report it is provided that the States shall have the power to regulate and tax the business of insurance. I am not complaining about that. In another part of the conference report it is provided that there shall be an unqualified moratorium on the applicability of the Sherman Act, the Clayton Act, the Federal Trade Commission Act, and the Robinson-Patman Antidiscrimination Act to the business of insurance until January 1, 1948. In other words, none of those four Federal acts would be applicable to the business of insurance until January 1, 1948. That would be a longer moratorium than the President, in two letters to which I will refer, indicated he would prefer, but I am not complaining even about a 3-year moratorium. There is considerable justification for the States being given an opportunity to modify their laws respecting the insurance business so that they shall not be in conflict with the four Federal acts enumerated in the provision to which I have referred. **But I do object, Mr. President,—and I believe the Senate, when it reflects upon the matter, will object—to the provision which I read providing that for all future time the Sherman Act, the Clayton Act, and the Federal Trade Commission Act shall not apply to the business of insurance except in a State which has not regulated the insurance business or to the extent a State has not denied the effect of such Federal acts.**

Mr. President, if that language had contained the limitation that the State regulation, in order to be valid, must not be inconsistent with the Clayton Act or the Sherman Act, I should have no objection to it. But under the language which I have read, and to which I am addressing my criticism, namely, that the Sherman Act, the Clayton Act, and the Federal Trade Commission Act shall be applicable to the business of insurance to the extent that such business is not regulated by State law, the State would be given the right to determine when, whether, and to what degree those three acts were applicable to the business of insurance. The various States, without any limitation upon their power, or without any requirement that State regulation shall not be inconsistent with the Sherman Act, the Clayton Act, and the Federal Trade Commission Act—

MR. McCARRAN. Mr. President, will the Senator yield?

MR. PEPPER. I yield.

MR. McCARRAN. The Senator undoubtedly recognizes the fact that the Congress of the United States would not attempt to tell a State how and upon what subject it should legislate. The Senator will agree with that statement, will he not?

MR. PEPPER. On the contrary, Mr. President, I may say that I am not willing to leave the applicability and the effectiveness of the Sherman Act and the Clayton Act to the decision of a State legislature. By doing so the Congress would be abrogating its power with respect to the subject exclusively to the several legislatures, that is, if we pass this law without imposing any limitation upon the States in the exercise of their regulatory power that it must be not inconsistent with the Clayton Act or the Sherman Act.

Page 1479:

MR. PEPPER. * * * * The Senate, when it passed this bill, provided for a moratorium, which is all right. It was longer than the President seemed to indicate, but no one raised any question about the moratorium being 3 years. The House carried the same provision and provided a 3-year moratorium, and I am not complaining about that, and if the conferees had not changed the provisions of the Senate bill and the House bill, but had put in everything they have in this conference report, leaving 3 years as the absolute moratorium during which these laws could not apply, I should be willing to accede to that. **But the language to which I object is the language which I read in the conference report, which carries, not a 3-year moratorium, but a perpetual moratorium.** This is the language to which I object:

> PROVIDED, That after January 1, 1948, the act of July 2, 1890, as amended, known as the Sherman Act, and the act of October 15, 1914, as amended, known as the Clayton Act, and the act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

Page 1480:

MR. MURDOCK. **The Senator in speaking of the language of the report indicates that it would permit absolute preemption of the field by the State, so far as regulation of insurance is concerned; that it would allow a State to repeal all its insurance laws and give carte blanche to insurance companies.**

MR. PEPPER. A State has the right, without any legislation, to regulate anything pertaining to the insurance business, and to the extent that

it regulates it has legitimized in its regulations so far as these Federal acts are concerned, and **by the proposed legislation we would give them the right to go as far toward cutting down or toward emasculating the Sherman Act and the Clayton Act as they choose to go.** The able Senator from Utah in his argument concerning the legislative history of the bill on the 25th of January pointed out time after time that even the original bill to a considerable extent gave that authority, and then when there was some clarification of that in section 2 by the amendment of the Senator from Michigan (Mr. Ferguson) to make the Sherman Act and the Clayton Act particularly applicable, then they came right back in the conference—no doubt unintentionally, **but they came right back in the conference and in my opinion gave the States the right to do anything they wanted to do relative to regulation without any limitation that it must not be an encroachment upon the Sherman Act and the Clayton Act.**

Page 1484:

MR. PEPPER. In a moment I will yield.

Mr. President, after the House passed a bill that provided a moratorium, giving the States the opportunity to correct their laws and bring them into conformity with the Sherman Act and the Clayton Act, after the Senate did the same thing, after the Attorney General came here and testified before the Senate Judiciary Committee that he had no objection to a reasonable moratorium in order to let them put their house in order, and after the President wrote two letters to the able Senator from Maryland saying first he had no objection to a reasonable moratorium, what are we faced with here today? A carte blanche authority at this late date which has been contained in no previous legislation, which has not passed the House or the

Senate; **we are now confronted with the language of this conference report which for the first time gives the States carte blanche to legitimatize the very vices against which the Clayton Act and the Sherman Act were directed, to which acts the insurance companies at last have been made amenable by the decision of the United States Supreme Court.**

MR. MURDOCK. * * * The Senator's argument is the same argument I would have made here a few months ago; but, confronted with the fact that we had to take either the bill which was passed by the House at the last session or something else, **I finally consented to support the conference report, which, in my opinion, not only grants a moratorium but allows the States to come affirmatively into the picture. If they do something objectionable, something we do not want done, then the Congress reserves the right to strike it down, and, with arguments such as those the able Senator from Florida is making, we could make both the Clayton Act and the Sherman Act applicable in their full vigor against anything the States might do.**

So, I ask **why not join us at this time and give the States the opportunity under this conference report to do what, in my opinion, they will do, and that is the right thing.**

age 1485:

MR. PEPPER. * * * * But, Mr. President, right here, for the first time, **this conference report is brought up, with the full knowledge that the legal effect of it, and the intended effect, not intended by the able Senator from Wyoming and the able Senator from Utah, but by the proponents of this series of legislation, is that the States shall have authority to repeal, pro tanto, the applicability of the Sherman Act and the Clayton Act to insurance within their borders. To accept that view at**

first blush without a protest, but giving countenance and acquiescence to that policy, seems to me to impugn the integrity of the Supreme Court decision, and our long insistence upon adherence to the Sherman Act and the Clayton Act.

Pages 1486-1487:

MR. O'MAHONEY. In response to the Senator's question, let me say that one of the House conferees, in the course of the conference, used this sentence, which I thought was extremely apt: **"This is a bill to authorize the States to regulate the insurance business; and if the States do not regulate it, the Federal Government can."**

From these extracts it will be seen that Congress fully realized and intended that the bill approved in the Conference Report, which was the one actually enacted into law as the McCarran-Ferguson Act, **definitely gave the States complete authority to regulate the business of insurance and all persons engaged therein.**

EXHIBIT 1.

IN THE SENATE OF THE UNITED STATES

79th CONGRESS - 1st Session

January 18, 1945

S. 340

Mr. McCarran (for himself and Mr. Ferguson) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To express the intent of the Congress with reference to the regulation of the business of insurance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

SEC. 2. (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the

several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically so provides.

SEC. 3. Nothing contained in the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, or the Act of June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall apply to the business of insurance or to acts in the conduct of that business.

SEC. 4. (a) For the purpose of enabling adjustments to be made and legislation to be adopted by the several States and Congress, until June 1, 1947, the Act of July 2, 1890, as amended, known as the Sherman Act, shall not apply to the business of insurance, or to acts in the conduct of such business, and until January 1, 1948, the Act of October 15, 1914, as amended, known as the Clayton Act, shall not apply to such business or to acts in the conduct thereof.

(b) Nothing contained in this section shall render the said Sherman Act inapplicable to any act of boycott, coercion, or intimidation.

SEC. 5. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or

the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938.

SEC. 6. As used in this Act, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia.

Sec. 7. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

EXHIBIT 2.

IN THE SENATE OF THE UNITED STATES

79th CONGRESS - 1st Session

Calendar No. 18

S. 340

[Report No. 20]

January 18, 1945

Mr. McCarran (for himself and Mr. Ferguson) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

January 24, 1945

Reported, under authority of the order of the Senate of January 22, 1945, by Mr. McCarran, with an amendment

[Insert the part printed in italic]

A BILL

To express the intent of the Congress with reference to the regulation of the business of insurance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that the

continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

SEC. 2. (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically so provides.

SEC. 3. Nothing contained in the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, or the Act of June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall apply to the business of insurance or to acts in the conduct of that business.

SEC. 4. (a) For the purpose of enabling adjustments to be made and legislation to be adopted by the several States and Congress, until June 1, 1947, the Act of July 2, 1890, as amended, known as the Sherman Act, shall not apply to the business of insurance, or to acts in the conduct of such business, and until January 1, 1948, the Act of October 15, 1914, as amended, known as the Clayton Act, shall not apply to such business or to acts in the conduct thereof.

(b) Nothing contained in this section shall render the said Sherman Act inapplicable to any *agreement or* act of boycott, coercion, or intimidation.

SEC. 5. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938.

SEC. 6. As used in this Act, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia.

SEC. 7. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

EXHIBIT 3.

Calendar No. 18

79th CONGRESS - 1st Session

SENATE

Report No. 20

EXPRESSING THE INTENT OF THE CONGRESS WITH REFERENCE TO THE REGULATION OF THE BUSINESS OF INSURANCE

January 24, 1945.—Ordered to be printed

Mr. McCarran, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 340]

The Committee on the Judiciary, to whom was referred the bill (S. 340) to express the intent of the Congress with reference to the regulation of the business of insurance, having considered the same, favorably report the bill to the Senate with an amendment with the recommendation that the bill, as amended, do pass.

On page 2, line 23, after the word "any", insert the words "agreement or".

GENERAL STATEMENT

From its beginning the business of insurance has been regarded as a local matter, to be subject to and regulated by the laws of the several States. This view has been fostered and augmented by decisions of the United States Supreme Court for a period of more than 75 years, leading to the generally accepted doctrine that the business of insurance was not subject to Federal law.

On June 5, 1944, in the case of *U. S. v. Southeastern Underwriters Association et al.*, the Supreme Court decided that the business of insurance was commerce and, therefore, subject to the Sherman Act of July 2, 1890, as amended, and the Clayton Act of October 15, 1914, as amended.

The Attorney General, in several appearances before the Judiciary Committee, frankly stated that the Department of Justice had no opposition to an extension of time to the insurance industry in order to make necessary adjustments to this decision.

Inevitable uncertainties which followed the handing down of the decision in the *Southeastern Underwriters Association case*, with respect to the constitutionality of State laws, have raised questions in the minds of insurance executives, State insurance officials, and others as to the validity of State tax laws as well as State regulatory provisions; thus making desirable legislation by the Congress to stabilize the general situation.

Bills attempting to deal with the problem were considered in both the House and the Senate during the

Seventy-eighth Congress, but failed of enactment. Your committee believes there is urgent need for an immediate expression of policy by the Congress with respect to the continued regulation of the business of insurance by the respective States. Already many insurance companies have refused, while others have threatened refusal to comply with State tax laws, as well as with other State regulations, on the ground that to do so, when such laws may subsequently be held unconstitutional in keeping with the precedent-smashing decision in the *Southeastern Underwriters case*, will subject insurance executives to both civil and criminal actions for misappropriation of company funds.

The committee has therefore given immediate consideration to S. 340, together with a similar measure (S. 12, introduced by Senators O'Mahoney and Hatch), so that the several States may know that the Congress desires to protect the continued regulation and taxation of the business of insurance by the several States, and thus enables insurance companies to comply with State laws. What is more, the Congress proposes by this bill to secure adequate regulation and control of the insurance business.

PURPOSE OF THE BILL

The purpose of the bill is twofold: (1) To declare that the continued regulation and taxation by the several States of the business of insurance is in the public interest; and (2) to assure a more adequate regulation of this business in the States by suspending the application of the Sherman and Clayton Acts for approximately two sessions of the State legislatures, so that the States and the Congress may consider legislation during that period. It

should be noted that this bill, by the moratorium proposed therein, does not repeal the Sherman and Clayton Acts, but opportunity will have been granted for the States to permit agreements and contracts by insurance companies which otherwise might be in violation of the Sherman and Clayton Acts. It should be noted further that no moratorium is granted from the Sherman Act relative to agreements or acts of boycott, coercion, or intimidation.

ANALYSIS BY SECTION.

Section 1 declares that the continued regulation and taxation by the States of the business of insurance is in the public interest.

Section 2 provides that the insurance business, and all persons engaged in such business, shall be subject to State laws relating to the regulation and taxation of such business; and *(b)* that no act of Congress shall be construed to invalidate, impair, or supersede any State law which regulates or taxes the insurance business, unless such act specifically so provides.

Section 3 provides that the Federal Trade Commission Act and the Robinson-Patman Antidiscrimination Act shall not apply to the insurance business, or to acts in the conduct of such business.

Section 4 suspends the application of the Sherman Act to the business of insurance until June 1, 1947, and suspends the application of the Clayton Act until January 1, 1948—

for the purpose of enabling adjustments to be made and legislation to be adopted by the several States and Congress—

and *(b)* provides that at no time are the prohibitions in the Sherman Act against any agreement or act of boycott, coercion, or intimidation, suspended. These provisions of the Sherman Act remain in full force and effect.

Section 5 provides that the enactment of this act shall not affect, in any manner, the present application of the National Labor Relations Act, or the Fair Labor Standards Act, to the business of insurance.

Section 6 defines the term "State."

Section 7 provides for separability of provisions.

CONCLUSION

In the considered judgment of your committee, S. 340 represents a most commendable effort on the part of insurance companies and State insurance commissioners to effect the adjustments and reorganization in and among the financial operations of insurance companies and in State laws which have been made necessary by the decision in the *Southeastern Underwriters case.* [It should be emphasized that the bill has received the overwhelming endorsement of the principal national organizations of State insurance commissioners, insurance executives, agents, brokers, and underwriters, including the National Association of Insurance Commissioners, the American Life Convention, the American Mutual Alliance, the Association of Casualty and Surety Executives, the Inland Marine Underwriters Association, the National Associa-

tion of Insurance Agents, the National Association of Mutual Insurance Agents, the National Board of Fire Underwriters, Insurance Executives Association, National Association of Insurance Brokers, Inc., the National Association of Casualty and Surety Agents, the Surety Association of America, the National Fraternal Congress of America, and the Health and Accident Underwriters Conference.] Opportunity is granted to the State legislatures during their present and forthcoming sessions for 1945, 1946, and 1947 to consider the welfare of policyholders.

Enactment of this bill will (1) remove existing doubts as to the right of the States to regulate and tax the business of insurance, and (2) secure more adequate regulation of such business.

EXHIBIT 4.

IN THE HOUSE OF REPRESENTATIVES

79th CONGRESS - 1st Session

S. 340

January 29, 1945

Referred to the Committee on the Judiciary

AN ACT

To express the intent of the Congress with reference to the regulation of the business of insurance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

Sec. 2. (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress, except the Act of July 2, 1890, as amended, known as the Sherman Act, and/or the Act of October 15, 1914, as amended, known as the Clayton Act, shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically so provides.

Sec. 3. Nothing contained in the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, or the Act of June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall apply to the business of insurance or to acts in the conduct of that business.

Sec. 4. (a) For the purpose of enabling adjustments to be made and legislation to be adopted by the several States and Congress, until June 1, 1947, the Act of July 2, 1890, as amended, known as the Sherman Act, shall not apply to the business of insurance, or to acts in the conduct of such business, and until January 1, 1948, the Act of October 15, 1914, as amended, known as the Clayton Act, shall not apply to such business or to acts in the conduct thereof.

(b) Nothing contained in this section shall render the said Sherman Act inapplicable to any agreement or act of boycott, coercion, or intimidation.

Sec. 5. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or

the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938.

Sec. 6. As used in this Act, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia.

Sec. 7. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

Passed the Senate January 25, 1945.

Attest: EDWIN A. HALSEY,
Secretary.

EXHIBIT 5.

IN THE HOUSE OF REPRESENTATIVES
79th CONGRESS - 1st Session

H. R. 1973

February 2, 1945

Mr. Walter introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To express the intent of the Congress with reference to the regulation of the business of insurance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

Sec. 2. (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insur-

ance, or which imposes a fee or tax upon such business, unless such Act specifically so provides.

Sec. 3. Nothing contained in the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, or the Act of June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall apply to the business of insurance or to acts in the conduct of that business.

Sec. 4. (a) Until January 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this section shall render the said Sherman Act inapplicable to any act of boycott, coercion, or intimidation.

Sec. 5. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938 or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

Sec. 6. As used in this Act, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia.

Sec. 7. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

EXHIBIT 6.

IN THE HOUSE OF REPRESENTATIVES

79th CONGRESS - 1st Session

House Calendar No. 35

H. R. 1973

[Report No. 68]

February 2, 1945

Mr. Walter introduced the following bill: which was referred to the Committee on the Judiciary

February 8, 1945

Reported with an amendment, referred to the House Calendar, and ordered to be printed
[Insert the part printed in italic]

A BILL

To express the intent of the Congress with reference to the regulation of the business of insurance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that the

continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

SEC. 2. (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically so provides.

SEC. 3. Nothing contained in the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, or the Act of June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall apply to the business of insurance or to acts in the conduct of that business.

Sec. 4. (a) Until January 1, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this section shall render the said Sherman Act inapplicable to any act of boycott, coercion, or intimidation.

SEC. 5. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938 or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

SEC. 6. As used in this Act, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia.

SEC. 7. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

EXHIBIT 7.

HOUSE OF REPRESENTATIVES

79th CONGRESS - 1st Session

Report No. 68

EXPRESSING THE INTENT OF THE CONGRESS WITH REFERENCE TO THE REGULATION OF THE BUSINESS OF INSURANCE

February 8, 1945.—Referred to the House Calendar and ordered to be printed

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Mr. Walter, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1973]

The Committee on the Judiciary, to whom was referred the bill (H. R. 1973) to express the intent of the Congress with reference to the regulation of the business of insurance, having considered the same, report favorably thereon with an amendment and, as amended, recommended that the bill do pass.

On page 2, line 13, after the word "January", insert the figure "1" and a comma.

GENERAL STATEMENT

From its beginning the business of insurance has been regarded as a local matter, to be subject to and regulated by the laws of the several States. This view has been fostered and augmented by decisions of the United States Supreme Court for a period of more than 75 years, leading to the generally accepted doctrine that the business of insurance was not subject to Federal law.

On June 5, 1944, in the case of *U. S. v. Southeastern Underwriters Association et al.*, the Supreme Court decided that the business of insurance was commerce and, therefore, subject to the Sherman Act of July 2, 1890, as amended, and the Clayton Act of October 15, 1914, as amended.

The Attorney General, in several appearances before the Judiciary Committee, frankly stated that the Department of Justice had no opposition to an extension of time to the insurance industry in order to make necessary adjustments to this decision.

Inevitable uncertainties which followed the handing down of the decision in the *Southeastern Underwriters Association case*, with respect to the constitutionality of State laws, have raised questions in the minds of insurance executives, State insurance officials, and others as to the validity of State tax laws as well as State regulatory provisions; thus making desirable legislation by the Congress to stabilize the general situation.

Bills attempting to deal with the problem were considered in both the House and the Senate during the Seventy-eighth Congress, but failed of enactment. Your com-

mittee believes there is urgent need for an immediate expression of policy by the Congress with respect to the continued regulation of the business of insurance by the respective States. Already many insurance companies have refused, while others have threatened refusal to comply with State tax laws, as well as with other State regulations, on the ground that to do so, when such laws may subsequently be held unconstitutional in keeping with the precedent-smashing decision in the *Southeastern Underwriters case*, will subject insurance executives to both civil and criminal actions for misappropriation of company funds.

The committee has therefore given immediate consideration to S. 340, together with a similar measure, H. R. 1973, so that the several States may know that the Congress desires to protect the continued regulation and taxation of the business of insurance by the several States, and thus enables insurance companies to comply with State laws. What is more, the Congress proposes by this bill to secure adequate regulation and control of the insurance business.

Nothing in this bill is to be so construed as indicating it to be the intent or desire of Congress to require or encourage the several States to enact legislation that would make it compulsory for any insurance company to become a member of rating bureaus or charge uniform rates. It is the opinion of Congress that competitive rates on a sound financial basis are in the public interest.

It is not the intention of Congress in the enactment of this legislation to clothe the States with any power to regulate or tax the business of insurance beyond that which

they had been held to possess prior to the decision of the United States Supreme Court in the *Southeastern Underwriters Association case.* Briefly, your committee is of the opinion that we should provide for the continued regulation and taxation of insurance by the States, subject always, however, to the limitations set out in the controlling decisions of the United States Supreme Court, as, for instance, in *Allgeyer v. Louisiana* (165 U. S. 578), *St. Louis Cotton Compress Co. v. Arkansas* (260 U. S. 346), and *Connecticut General Insurance Co. v. Johnson* (303 U. S. 77), which hold, inter alia, that a State does not have power to tax contracts of insurance or reinsurance entered into outside its jurisdiction by individuals or corporations resident or domiciled therein covering risks within the State or to regulate such transactions in any way.

PURPOSE OF THE BILL

The purpose of the bill is twofold: (1) To declare that the continued regulation and taxation by the several States of the business of insurance is in the public interest; and (2) to assure a more adequate regulation of this business in the States by suspending the application of the Sherman and Clayton Acts for approximately two sessions of the State legislatures, so that the States and the Congress may consider legislation during that period. It should be noted that this bill, by the moratorium proposed therein, does not repeal the Sherman and Clayton Acts, but opportunity will have been granted for the States to permit agreements and contracts by insurance companies which otherwise might be in violation of the Sherman and Clayton Acts. It should be noted further that no moratorium is granted from the Sherman Act relative to agreements or acts of boycott, coercion, or intimidation.

ANALYSIS BY SECTION

Section 1 declares that the continued regulation and taxation by the States of the business of insurance is in the public interest.

Section 2 provides that the insurance business, and all persons engaged in such business, shall be subject to State laws relating to the regulation and taxation of such business; and (*b*) that no act of Congress shall be construed to invalidate, impair, or supersede any State law which regulates or taxes the insurance business, unless such act specifically so provides.

Section 3 provides that the Federal Trade Commission Act and the Robinson-Patman Antidiscrimination Act shall not apply to the insurance business, or to acts in the conduct of such business.

Section 4 suspends the application of the Sherman Act and the Clayton Act to the business of insurance until January 1, 1948, for the purpose of enabling adjustments to be made and legislation to be adopted by the several States and Congress; and (b) provides that at no time are the prohibitions in the Sherman Act against any act of boycott, coercion, or intimidation suspended. These provisions of the Sherman Act remain in full force and effect.

Section 5 provides that the enactment of this act shall not affect, in any manner, the present application of the National Labor Relations Act, the Fair Labor Standards Act, or the Merchant Marine Act, to the business of insurance.

Section 6 defines the term "State."

Section 7 provides for separability of provisions.

CONCLUSION

In the considered judgment of your committee, H. R. 1973 represents a most commendable effort on the part of insurance companies and State insurance commissioners to effect the adjustments and reorganization in and among the financial operations of insurance companies and in State laws which have been made necessary by the decision in the *Southeastern Underwriters case*. It should be emphasized that the bill has received the overwhelming endorsement of the principal national organizations of State insurance commissioners, insurance executives, agents, brokers, and underwriters, including the National Association of Insurance Commissioners, the American Life Convention, the American Mutual Alliance, the Association of Casualty and Surety Executives, the Inland Marine Underwriters Association, the National Association of Insurance Agents, the National Association of Mutual Insurance Agents, the National Board of Fire Underwriters, Insurance Executives Association, National Association of Insurance Brokers, Inc., the National Association of Casualty and Surety Agents, the Surety Association of America, the National Fraternal Congress of America, and the Health and Accident Underwriters Conference. Opportunity is granted to the State legislatures during their present and forthcoming sessions for 1945, 1946, and 1947 to consider the welfare of policyholders.

Enactment of this bill will (1) remove existing doubts as to the right of the States to regulate and tax the business of insurance, and (2) secure more adequate regulation of such business.

EXHIBIT 8.

IN THE HOUSE OF REPRESENTATIVES

79th CONGRESS - 1st Session

House Calendar No. 41

S. 340

[Report No. 143]

January 29, 1945

Referred to the Committee on the Judiciary
February 13, 1945

Reported with an amendment, referred to the House Calendar, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

To express the intent of the Congress with reference to the regulation of the business of insurance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress

assembled, That the Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

SEC. 2. (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress, except the Act of July 2, 1890, as amended, known as the Sherman Act, and/or the Act of October 15, 1914, as amended, known as the Clayton Act, shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically so provides.

SEC. 3. Nothing contained in the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, or the Act of June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall apply to the business of insurance or to acts in the conduct of that business.

SEC. 4. (a) For the purpose of enabling adjustments to be made and legislation to be adopted by the several States and Congress, until June 1, 1947, the Act of July 2, 1890, as amended, known as the Sherman Act, shall not apply to the business of insurance, or to acts in the conduct of such business, and until January 1, 1948, the

~~Act of October 15, 1914, as amended, known as the Clayton Act, shall not apply to such business or to acts in the conduct thereof.~~

~~(b) Nothing contained in this section shall render the said Sherman Act inapplicable to any agreement or act of boycott, coercion, or intimidation.~~

~~SEC. 5. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938.~~

~~SEC. 6. As used in this Act, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia.~~

~~SEC. 7. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.~~

That the Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

SEC. 2. (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the

several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically so provides.

Sec. 3. Nothing contained in the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, or the Act of June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall apply to the business of insurance or to acts in the conduct of that business.

SEC. 4. (a) Until January 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this section shall render the said Sherman Act inapplicable to any act of boycott, coercion, or intimidation.

SEC. 5. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938 or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

Sec. 6. As used in this Act, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia.

Sec. 7. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

Passed the Senate January 25, 1945.

Attest: EDWIN A. HALSEY,
Secretary.

EXHIBIT 9.

HOUSE OF REPRESENTATIVES

79th CONGRESS - 1st Session

Report No. 143

EXPRESSING THE INTENT OF THE CONGRESS WITH REFERENCE TO THE REGULATION OF THE BUSINESS OF INSURANCE

February 13, 1945.—Referred to the House Calendar and ordered to be printed

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Mr. Walter, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 340]

The Committee on the Judiciary, to whom was referred the bill (S. 340) to express the intent of the Congress with reference to the regulation of the business of insurance, having considered the same, report favorably thereon with an amendment with the recommendation that the bill, as amended, do pass.

The committee amendment is as follows:

Strike out all after the enacting clause and insert the following:

That the Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

SEC. 2. (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically so provides.

SEC. 3. Nothing contained in the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, or the Act of June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall apply to the business of insurance or to acts in the conduct of that business.

SEC. 4. (a) Until January 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this section shall render the said Sherman Act inapplicable to any act of boycott, coercion, or intimidation.

Sec. 5. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938 or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

Sec. 6. As used in this Act, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia.

Sec. 7. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

GENERAL STATEMENT

From its beginning the business of insurance has been regarded as a local matter, to be subject to and regulated by the laws of the several States. This view has been fostered and augmented by decisions of the United States Supreme Court for a period of more than 75 years, leading to the generally accepted doctrine that the business of insurance was not subject to Federal law.

One June 5, 1944, in the case of *U. S.* v. *Southeastern Underwriters Association et al.*, the Supreme Court

decided that the business of insurance was commerce and, therefore, subject to the Sherman Act of July 2, 1890, as amended, and the Clayton Act of October 15, 1914, as amended.

The Attorney General, in several appearances before the Judiciary Committee, frankly stated that the Department of Justice had no opposition to an extension of time to the insurance industry in order to make necessary adjustments to this decision.

Inevitable uncertainties which followed the handing down of the decision in the *Southeastern Underwriters Association case*, with respect to the constitutionality of State laws, have raised questions in the minds of insurance executives, State insurance officials, and others as to the validity of State tax laws as well as State regulatory provisions; thus making desirable legislation by the Congress to stabilize the general situation.

Bills attempting to deal with the problem were considered in both the House and the Senate during the Seventy-eighth Congress, but failed of enactment. Your committee believes there is urgent need for an immediate expression of policy by the Congress with respect to the continued regulation of the business of insurance by the respective States. Already many insurance companies have refused, while others have threatened refusal to comply with State tax laws, as well as with other State regulations, on the ground that to do so, when such laws may subsequently be held unconstitutional in keeping with the precedent-smashing decision in the *Southeastern Underwriters case*, will subject insurance executives to both civil

and criminal actions for misappropriation of company funds.

The committee has therefore given immediate consideration to S. 340, together with a similar measure, H. R. 1973, so that the several States may know that the Congress desires to protect the continued regulation and taxation of the business of insurance by the several States, and thus enables insurance companies to comply with State laws. What is more, the Congress proposes by this bill to secure adequate regulation and control of the insurance business.

Nothing in this bill is to be so construed as indicating it to be the intent or desire of Congress to require or encourage the several States to enact legislation that would make it compulsory for any insurance company to become a member of rating bureaus or charge uniform rates. It is the opinion of Congress that competitive rates on a sound financial basis are in the public interest.

It is not the intention of Congress in the enactment of this legislation to clothe the States with any power to regulate or tax the business of insurance beyond that which they had been held to possess prior to the decision of the United States Supreme Court in the *Southeastern Underwriters Association case*. Briefly, your committee is of the opinion that we should provide for the continued regulation and taxation of insurance by the States, subject always, however, to the limitations set out in the controlling decisions of the United States Supreme Court, as, for instance, in *Allgeyer* v. *Louisiana* (165 U. S. 578), *St. Louis Cotton Compress Co.* v. *Arkansas* (260 U. S. 346), and *Connecticut General Insurance Co.* v. *Johnson*

(303 U. S. 77), which hold, inter alia, that a State does not have power to tax contracts of insurance or reinsurance entered into outside its jurisdiction by individuals or corporations resident or domiciled therein covering risks within the State or to regulate such transactions in any way.

PURPOSE OF THE BILL

The purpose of the bill is twofold: (1) To declare that the continued regulation and taxation by the several States of the business of insurance is in the public interest; and (2) to assure a more adequate regulation of this business in the States by suspending the application of the Sherman and Clayton Acts for approximately two sessions of the State legislatures, so that the States and the Congress may consider legislation during that period. It should be noted that this bill, by the moratorium proposed therein, does not repeal the Sherman and Clayton Acts, but opportunity will have been granted for the States to permit agreements and contracts by insurance companies which otherwise might be in violation of the Sherman and Clayton Acts. It should be noted further that no moratorium is granted from the Sherman Act relative to agreements or acts of boycott, coercion, or intimidation.

ANALYSIS BY SECTION

Section 1 declares that the continued regulation and taxation by the States of the business of insurance is in the public interest.

Section 2 provides that the insurance business, and all persons engaged in such business, shall be subject to State laws relating to the regulation and taxation of such

business; and *(b)* that no act of Congress shall be construed to invalidate, impair, or supersede any State law which regulates or taxes the insurance business, unless such act specifically so provides.

Section 3 provides that the Federal Trade Commission Act and the Robinson-Patman Antidiscrimination Act shall not apply to the insurance business, or to acts in the conduct of such business.

Section 4 suspends the application of the Sherman Act and the Clayton Act to the business of insurance until January 1, 1948; and (b) provides that at no time are the prohibitions in the Sherman Act against any act of boycott, coercion, or intimidation suspended. These provisions of the Sherman Act remain in full force and effect.

Section 5 provides that the enactment of this act shall not affect, in any manner, the present application of the National Labor Relations Act, the Fair Labor Standards Act, or the Merchant Marine Act, to the business of insurance.

Section 6 defines the term "State."

Section 7 provides for separability of provisions.

CONCLUSION

In the considered judgment of your committee, S. 340, as amended, represents a most commendable effort on the part of insurance companies and State insurance commissioners to effect the adjustments and reorganization in and among the financial operations of insurance

companies and in State laws which have been made necessary by the decision in the *Southeastern Underwriters case*. It should be emphasized that the bill has received the overwhelming endorsement of the principal national organizations of State insurance commissioners, insurance executives, agents, brokers, and underwriters, including the National Association of Insurance Commissioners, the American Life Convention, the American Mutual Alliance, the Association of Casualty and Surety Executives, the Inland Marine Underwriters Association, the National Association of Insurance Agents, the National Association of Mutual Insurance Agents, the National Board of Fire Underwriters, Insurance Executives Association, National Association of Insurance Brokers, Inc., the National Association of Casualty and Surety Agents, the Surety Association of America, the National Fraternal Congress of America, and the Health and Accident Underwriters Conference. Opportunity is granted to the State legislatures during their present and forthcoming sessions for 1945, 1946, and 1947 to consider the welfare of policyholders.

Enactment of this bill will (1) remove existing doubts as to the right of the States to regulate and tax the business of insurance, and (2) secure more adequate regulation of such business.

EXHIBIT 10.

HOUSE OF REPRESENTATIVES

79th CONGRESS - 1st Session

Report No. 213

EXPRESSING THE INTENT OF CONGRESS WITH REFERENCE TO THE REGULATION OF THE BUSINESS OF INSURANCE

February 22, 1945.—Ordered to be printed

Mr. Sumners of Texas, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 340]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (S. 340) to express the intent of the Congress with reference to the regulation of the business of insurance, having met, after full and free conference, have

agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

Sec. 2. (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: Provided, That after January 1, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal

Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by state law.

Sec. 3. (a) Until January 1, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, and the Act of June 19, 1936, known as the Robinson-Patman Anti-discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this Act shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

Sec. 4. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938 or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

Sec. 5. As used in this Act, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia.

Sec. 6. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances

other than those as to which it is held invalid, shall not be affected.

And the House agrees to the same.

Hatton W. Sumners,
Francis E. Walter,
C. E. Hancock,
Managers on the part of the House.

Pat McCarran,
Joseph C. O'Mahoney,
Homer Ferguson,
Managers on the part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 340) to express the intent of the Congress with reference to the regulation of the business of insurance, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause. The committee of conference recommends that the Senate recede from its disagreement to the amendment of the House, with an amendment which is a substitute for both the Senate bill and the House amendment, and that the House agree to the same.

It was the purpose on the part of the managers of the House to have the agreement between themselves and

the managers on the part of the Senate to state in as clear language as possible that a moratorium be granted to the insurance business from the operation of the act of July 2, 1890, as amended, known as the Sherman Act, and the act of October 15, 1914, as amended, known as the Clayton Act, and the act of September 26, 1914, known as the Federal Trade Commission Act, as amended, and the act of June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, until January 1, 1948, leaving the taxing and regulatory powers of the several States fully protected.

The principal difference between the conference report and the bill as it passed the House lies in the inclusion of the act of September 26, 1914, known as the Federal Trade Commission Act, as amended, and the act of June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, in the moratorium provision, and making clear the intention of the Congress that the acts of boycott, coercion, and intimidation are subject to the operation of the suspended statutes even during the moratorium period.

Hatton W. Sumners,
Francis E. Walter,
C. E. Hancock,
Managers on the part of the House.